

Message Text

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TAGS: CCMS, SENV

SUBJECT: CCMS: SPRING PLENARY ROUND TABLE

1. REQUEST EMBASSY TRANSMIT FOLLOWING US STATEMENT ON
"THE ROLE OF ENVIRONMENTAL CONSIDERATIONS IN THE DECISION-
MAKING PROCESS IN THE UNITED STATES" ASAP TO APPRO-
PRIATE HOST GOVERNMENT OFFICIALS. AT SPRING PLENARY
ROUND TABLE, US WILL PRESENT A SHORT SUMMARY ORAL
STATEMENT FOCUSING ON THE STRENGTHS AND SHORTCOMINGS
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OF OUR EXPERIENCE WITH THE ENVIRONMENTAL IMPACT STATEMENT
PROCESS. WE HOPE TO SEE ROUNDTABLE DISCUSSION FOCUS ON
CASE BY CASE EXPERIENCES RELATING TO EIS'S AND NATIONAL
COMPREHENSIVE PLANNING PROCESS.

2. BEGIN TEXT:

CCMS ROUNDTABLE PAPER ON THE ENVIRONMENTAL IMPACT
STATEMENT PROCESS OF THE UNITED STATES

-- SUMMARY

UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) OF 1969, THE UNITED STATES HAS ESTABLISHED WHAT HAS BECOME A FAR REACHING PROCESS THAT REQUIRES U.S. FEDERAL AGENCIES TO ANALYZE THE IMPACTS OF THEIR PROPOSED DECISIONS AND THEIR ALTERNATIVES. BEFORE TAKING MAJOR ACTIONS WITH SIGNIFICANT IMPACT ON THE HUMAN ENVIRONMENT, FEDERAL AGENCIES MUST PREPARE THESE ANALYSES AS PART OF A PUBLIC DOCUMENT KNOWN AS THE ENVIRONMENTAL IMPACT STATEMENT. FEDERAL ACTIONS COVERED BY THE ENVIRONMENTAL IMPACT STATEMENT (EIS) REQUIREMENT OF NEPA INCLUDE FEDERAL CONSTRUCTION PROJECTS, REGULATIONS, GRANTS OF MONEY, AND PERMITS OR LICENSES FOR PRIVATE PROJECTS. MORE THAN 7500 FEDERAL ACTIONS HAVE BEEN SUBJECT TO IMPACT STATEMENTS SINCE 1970 AND THE REQUIREMENT HAS BECOME AN INTEGRAL PART OF THE UNITED STATES' DECISIONMAKING.

THE EIS REQUIREMENTS HAVE FORCED FEDERAL AGENCIES TO DEVELOP CONSIDERABLE INTERNAL EXPERTISE IN MANY DISCIPLINES INCLUDING THE SOCIAL SCIENCES. THESE HAVE HELPED IDENTIFY DATA GAPS IN IMPORTANT ENVIRONMENTAL CONCERNS. IT HAS HELPED RATIONALIZE AND COORDINATE NATIONAL ENVIRONMENTAL POLICY BOTH WITHIN THE FEDERAL ESTABLISHMENT AND WITH THE STATE AND LOCAL GOVERNMENTS. IT HAS, IN ADDITION, PROVIDED THE MEANS FOR HEARING AND

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RESPONDING TO PUBLIC CRITICISM ON PROPOSED FEDERAL ACTIONS AND HAS SERVED TO OPEN UP THE FEDERAL ADMINISTRATIVE PROCESS TO THE PUBLIC AS NEVER BEFORE. FOR ALL OF THESE REASONS THE ENVIRONMENTAL IMPACT STATEMENT REQUIREMENT HAS SIGNIFICANTLY IMPROVED THE FEDERAL PLANNING AND DECISIONMAKING PROCESS. PARTLY AS A RESULT IT HAS BEEN WIDELY IMITATED BY APPROXIMATELY HALF THE STATES IN THE UNION AND HAS BEEN ADOPTED IN MODIFIED FORM IN OTHER FIELDS. RECENTLY, FEDERAL AGENCIES BEGAN PREPARING INFLATION (NOW CALLED ECONOMIC) IMPACT STATEMENTS ON THEIR PROPOSED REGULATIONS. THE DEFENSE DEPARTMENT IS REQUIRED TO PREPARE DISARMAMENT IMPACT STATEMENTS ON ITS MAJOR WEAPON DEVELOPMENT PROGRAMS.

THE ENVIRONMENTAL IMPACT STATEMENT REQUIREMENT HAS NOT BEEN ADOPTED WITHOUT SOME PROBLEMS. COMMON OBJECTIONS HAVE BEEN THAT IT DELAYS PROJECTS, INCREASES PROJECT COST AND STIMULATES LITIGATION. UPON CLOSE EXAMINATION, HOWEVER, IT APPEARS THAT THESE PROBLEMS HAVE LARGELY BEEN

ELIMINATED. THE MAJOR NEED TODAY IS TO IMPROVE THE VALUE OF THE ENVIRONMENTAL IMPACT STATEMENT PROCESS TO FEDERAL DECISIONMAKERS BY MAKING THE ENVIRONMENTAL IMPACT STATEMENT LESS CUMBERSOME AS A DOCUMENT, BY IMPROVING ITS FOCUS ON SIGNIFICANT IMPACTS AND ALTERNATIVES, AND BY DEVELOPING BETTER FEDERAL AGENCY RESPONSE TO THE ENVIRONMENTAL CONCERNS OF STATE AND LOCAL GOVERNMENTS AND MEMBERS OF THE PUBLIC.

I. BACKGROUND ON NEPA:

THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 ESTABLISHED A FEDERAL GOVERNMENT DUTY TO PROTECT AND ENHANCE MANKIND'S ENVIRONMENT AND TO MAKE ENVIRONMENTAL CONCERN MEANINGFUL IN ALL FEDERAL ACTIONS AND POLICIES. THE ACT RESPONDED TO WIDESPREAD AWARENESS THAT TRADITIONAL INTEREST IN ECONOMIC DEVELOPMENT, THE PRESSURES OF POPULATION, AND UNCLASSIFIED

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INDUSTRIAL AND URBAN GROWTH HAD CAUSED SEVERE DISLOCATIONS THAT NEEDED IMMEDIATE AND LONG TERM CORRECTION.

NEPA'S MAJOR PROVISIONS WERE BROADLY CONCEIVED AND STATED. THE ACT REQUIRED BASIC REFORM OF GOVERNMENT OPERATIONS--THROUGH MORE COMPREHENSIVE AND PUBLIC AGENCY DECISIONMAKING--AND ESTABLISHMENT OF PRIORITIES--THROUGH CONSIDERATION OF ENVIRONMENTAL FACTORS ALONG WITH FISCAL AND TECHNICAL CONCERNS. IT HAD THREE MAJOR COMPONENTS. FIRST IT DECLARED A NATIONAL POLICY "TO USE ALL PRACTICABLE MEANS...TO FOSTER AND PROMOTE THE GENERAL WELFARE, TO CREATE AND MAINTAIN CONDITIONS UNDER WHICH MAN AND NATURE CAN EXIST IN PRODUCTIVE HARMONY, AND FULFILL THE SOCIAL, ECONOMIC AND OTHER REQUIREMENTS OF FUTURE GENERATIONS OF AMERICANS." THE ACT SPECIFIED SEVERAL WAYS THAT THE FEDERAL GOVERNMENT SHOULD IMPROVE AND COORDINATE ITS POLICIES AND PROGRAMS IN ORDER TO PROTECT, AS A TRUSTEE, THE DIVERSE CULTURAL AND NATURAL ENVIRONMENTS AND NATURAL RESOURCES THAT ARE NEEDED TO SERVE PRESENT AND FUTURE GENERATIONS.

SECONDLY, THE ACT REQUIRED ALL FEDERAL AGENCIES TO REALIZE THESE GOALS BY TAKING AN INTERDISCIPLINARY APPROACH TO DECISIONMAKING, AND BY SEEKING TO BRING PRESENTLY UNQUANTIFIED VALUES AND AMENITIES INTO THEIR PLANNING AND DECISIONMAKING. MOST NOTABLY, IT REQUIRED IN SECTION 102(2)(C), THAT ALL AGENCIES INCLUDE A DETAILED

ENVIRONMENTAL STATEMENT WITH THEIR "PROPOSALS FOR LEGISLATION AND OTHER MAJOR FEDERAL ACTIONS SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT." THE ACT

SPECIFICALLY REQUIRED THAT THIS DETAILED STATEMENT COVER FIVE POINTS, THE MOST IMPORTANT OF WHICH IS THE IMPACT OF THE PROPOSED ACTION AND ANALYSIS OF ALTERNATIVES. SECTION 102(2)(C) ALSO REQUIRED AGENCY CONSULTATION WITH OTHER AGENCIES, STATES AND LOCAL GOVERNMENTS BEFORE UNCLASSIFIED

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PREPARING THE STATEMENT, AND THAT THE STATEMENT BE MADE AVAILABLE TO THE PUBLIC.

LASTLY, NEPA ESTABLISHED THE COUNCIL ON ENVIRONMENTAL QUALITY (CEQ). THE COUNCIL MUST, AMONG OTHER THINGS, ADVISE THE PRESIDENT ON ENVIRONMENTAL MATTERS, REVIEW AGENCY COMPLIANCE WITH NEPA, AND PREPARE FOR THE PRESIDENT AN ANNUAL REPORT ON CONDITIONS AND TRENDS IN THE NATION'S ENVIRONMENT AND GOVERNMENT ACTIVITIES AND A PROGRAM TO REMEDY ANY DEFICIENCIES.

EXECUTIVE ORDER 11514 OF MARCH 1970 MORE CLEARLY SPELLED OUT THE DUTIES OF THE AGENCIES AND THE CEQ UNDER NEPA. IT DIRECTED AGENCIES CONTINUALLY TO MONITOR, EVALUATE AND CONTROL THEIR ACTIVITIES TO PROTECT AND ENHANCE THE ENVIRONMENT, TO DEVELOP PROGRAMS TO MEET SUCH GOALS, AND TO ASSESS THEIR PROGRESS IN DOING SO. IT ALSO REQUIRED AGENCIES TO DEVELOP PROCEDURES FOR MAKING AVAILABLE TO THE PUBLIC INFORMATION ON AGENCY PLANS AND PROGRAMS HAVING ENVIRONMENTAL IMPACTS. THE EXECUTIVE ORDER DIRECTED CEQ TO ISSUE GUIDELINES FOR AGENCY PREPARATION OF IMPACT STATEMENTS.

II. THE EIS PROCESS AND CEQ'S GUIDANCE TO AGENCIES:

SINCE THE EXECUTIVE ORDER, CEQ HAS ISSUED THREE SETS OF GUIDELINES ON IMPACT STATEMENT PREPARATION. THE CURRENT GUIDELINES WERE ISSUED IN AUGUST, 1973. THE GUIDELINES COMPLEMENTED AND FOLLOWED THE CONSTRUCTION OF NEPA AND ITS EIS REQUIREMENT THAT WERE CONTINUALLY BEING DEVELOPED BY AGENCY PRACTICE AND BY THE FEDERAL COURTS. THESE COURT DECISIONS EMPHASIZED AND ENFORCED THE REQUIREMENT THAT AGENCIES EVALUATE AND DISCLOSE FULLY, HONESTLY AND IN A TIMELY WAY, THE IMPACTS OF THEIR PROPOSED ACTIONS AND THE REASONABLE ALTERNATIVES.

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CEQ'S GUIDELINES SEEK TO BRING EIS PROCEDURES INTO LINE

WITH AGENCY NEEDS AND EXPERIENCES AS WELL AS COURT DECISIONS. THE GUIDELINES SPECIFICALLY STATE THAT THE EIS SHOULD BE A CONCISE, NON-TECHNICAL DOCUMENT FOCUSING ON THE IMPACTS OF A PROPOSAL AND ITS REASONABLE ALTERNA-

TIVES. THE EIS SHOULD BE DESIGNED TO HELP DECISION-MAKERS AND THE PUBLIC ADDRESS THESE QUESTIONS:

FIRST, WHAT ARE THE GOALS OF THE PROJECT AND THE NEED FOR THEM?

SECOND, WHAT IS THE EXTENT OF THE ENVIRONMENTAL DAMAGE IT WILL CAUSE?

THIRD, CAN AGENCY GOALS OF THE PROJECT BE MET THROUGH SOME ALTERNATIVE PATH THAT WOULD CAUSE LESS DAMAGE; AND

FOURTH, IF THERE IS NO FEASIBLE ALTERNATIVE, WHAT STEPS WILL BE TAKEN TO MINIMIZE THE ENVIRONMENTAL DAMAGE?

THE GUIDELINES ESTABLISH THE BASIC STRUCTURE FOR THE EIS PROCESS, WHICH MUST BEGIN WITH A FEDERAL AGENCY'S DETERMINATION THAT A PROPOSED ACTION WILL, OR WILL NOT, HAVE SIGNIFICANT EFFECTS ON THE HUMAN ENVIRONMENT. THEN THE AGENCY MUST NOTIFY THE PUBLIC THAT IT WILL PREPARE A DRAFT EIS. ONCE A DRAFT IS PREPARED IT IS SENT TO THE COUNCIL, OTHER FEDERAL, STATE AND LOCAL AGENCIES, AND TO INTERESTED MEMBERS OF THE PUBLIC FOR COMMENT. THE COMMENT PERIOD MUST BE AT LEAST 45 DAYS. THE AGENCY MUST THEN ANALYZE ANY COMMENTS IT RECEIVES, REVISE THE DRAFT AND PREPARE A FINAL STATEMENT, WHICH MUST ALSO INCLUDE A RECORD OF ALL COMMENTS. THE FINAL :IS IS CIRCULATED TO THE SAME PARTIES WHO RECEIVED THE DRAFT AND THE AGENCY MUST WAIT 30 DAYS BEFORE TAKING ANY ACTION. THE ENTIRE PROCESS, FROM ISSUANCE OF THE DRAFT TO THE TAKING OF AN ACTION, UNCLASSIFIED

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MUST FORMALLY BE NOT LESS THAN 90 DAYS.

THE GUIDELINES REQUIRE THAT THE EIS PROCESS BE APPLIED TO A WIDE RANGE OF FEDERAL ACTIONS WITH SIGNIFICANT ENVIRONMENTAL IMPACTS, WHETHER A LOAN, GRANT, PERMIT, LICENSE, CONTRACT, LAND USE PLAN, CONSTRUCTION PROJECT OR REGULATION; AND THAT EACH EIS SHOULD CONSIDER THE FULL RANGE OF SIGNIFICANT ENVIRONMENTAL EFFECTS, INCLUDING CUMULATIVE, SYNERGISTIC, INTERNATIONAL, SOCIAL, AND ECONOMIC EFFECTS. MOST AGENCIES CONDUCT ENVIRONMENTAL ASSESSMENTS OF MANY THOUSANDS OF ACTIONS, IN ORDER TO DETERMINE WHICH ACTIONS NEED EIS'S. THIS ASSESSMENT PROCESS FOSTERS IMPROVEMENTS IN PROJECTS TO ALLEVIATE ENVIRONMENTAL DAMAGE AND THUS

UNDERLIES THE WHOLE EIS PROCESS.

SINCE FEDERAL PROGRAMS AND ADMINISTRATIVE PRACTICES VARY SO SUBSTANTIALLY, THE GUIDELINES REQUIRE AGENCIES TO DEVELOP THEIR OWN SPECIFIC PROCEDURES TO TAILOR THE GUIDELINES AND THE EIS PROCESS TO THEIR PARTICULAR ACTIVITIES. TODAY APPROXIMATELY 70 FEDERAL AGENCIES HAVE DEVELOPED SUCH PROCEDURES. MOST RECENTLY THE AGENCY FOR INTERNATIONAL DEVELOPMENT (AID) HAS ESTABLISHED A FORMAL EIS PROCEDURE FOR ITS FOREIGN ASSISTANCE PROGRAMS. IN LINE WITH THIS, THE CEQ IS NOW ASKING THAT ENVIRONMENTAL IMPACT ANALYSES BE PREPARED ON ANY OVERSEAS FEDERALLY-SPONSORED ACTIVITY, RELATING TO IMPACTS ON THE GLOBAL COMMONS OR ON THE US ITSELF.

CEQ GUIDELINES, AGENCY NEPA/EIS REGULATIONS, AND JUDICIAL OPINION PROVIDE THE BASIC POLICY DIRECTION AND FRAMEWORK FOR THE EIS PROCESS BUT MORE IS NECESSARY. AGENCY HANDBOOKS, PRACTICE MANUALS, POLICY MEMOS AND PRIORITIES, AND LEGAL COUNSEL'S ADVICE ARE THE MATERIALS THAT MOST DIRECTLY GUIDE AGENCY STAFF, ESPECIALLY IN THE FIELD. SIMILARLY, CEQ'S OTHER GUIDANCE TO AGENCIES--SUCH AS GENERAL MEMORANDA TO HEADS OF AGENCIES, LETTERS ON SPECIFIC CASES TO VARIOUS LEVELS OF AGENCY STAFF, AND UNCLASSIFIED

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LEGISLATIVE REPORTS AND TESTIMONY--OFTEN HAS A MORE DIRECT AND IMMEDIATE EFFECT ON AGENCIES' PRACTICES THAN THE BROADER GUIDELINES THEMSELVES.

IN 1975 CEQ CONDUCTED AN INTENSIVE YEAR-AND-A-HALF REVIEW OF AGENCIES' USE OF THE EIS PROCESS IN DECISIONMAKING, THEIR COMPLIANCE PROBLEMS, AND POSSIBLE IMPROVEMENTS THAT CEQ AND THE AGENCIES MIGHT MAKE. TO LEARN ABOUT AGENCY EXPERIENCES WITH THE THOUSANDS OF EIS'S PREPARED, CEQ SENT A QUESTIONNAIRE ON THE EIS PROCESS TO ALL AGENCIES IN NOVEMBER 1975, FOLLOWED BY A SECOND ON THEIR NEPA LITIGATION EXPERIENCE. CEQ STAFF FOLLOWED UP WITH MEETINGS WITH THE AGENCIES MOST INVOLVED IN THE EIS PROCESS. THE STAFF ALSO SOUGHT THE WRITTEN VIEWS OF ALL THE STATES ON THE NEPA PROCESS, RECEIVED RESPONSES FROM 27 AND REVIEWED THESE WITH A SPECIAL COMMITTEE OF THE NATIONAL GOVERNORS CONFERENCE.

IN MARCH 1976, CEQ PUBLISHED ITS REVIEW REPORT. THE REPORT CITED THE MAJOR ACCOMPLISHMENTS OF NEPA AND NOTED THE MANY IMPROVEMENTS THAT ARE NEEDED TO MAKE THE EIS PROCESS MORE EFFECTIVE. THESE ACCOMPLISHMENTS AND PROBLEMS ARE SUMMARIZED BELOW.

III. ACCOMPLISHMENTS OF NEPA

A. THE NEPA PROCESS HAS SIGNIFICANTLY CHANGED AND IMPROVED FEDERAL DECISIONMAKING.

THE NEPA PROCESS HAS HAD A MAJOR BENEFICIAL EFFECT ON FEDERAL AGENCY PLANNING AND DECISIONMAKING SINCE 1970. IN THE EARLY YEARS OF THE ACT, AGENCIES' ATTENTION WAS FOCUSED ON THE REQUIREMENT THAT THEY PRODUCE THE REQUISITE ENVIRONMENTAL IMPACT STATEMENTS. OVER THE PAST SEVEN YEARS THIS REQUIREMENT FOR FORMAL AND PUBLIC ENVIRONMENTAL DOCUMENTS HAS STIMULATED A PROCESS OF ENVIRONMENTAL

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ANALYSIS THAT HAS HAD A SIGNIFICANT EFFECT ON FEDERAL AGENCY PLANS AND DECISIONS.

IT IS VIRTUALLY IMPOSSIBLE TO MEASURE THIS EFFECT WITH PRECISION. ATTEMPTS TO MAKE SUCH ASSESSMENTS THROUGH CRITIQUES OF IMPACT STATEMENTS, AND THEIR LENGTH, CONTENT AND USE, DO NOT REVEAL THE MOST IMPORTANT EFFECTS OF NEPA. THE PROCESS OF PREPARING A DRAFT EIS MAY CAUSE A GOOD DEAL TO HAPPEN WITHIN AN AGENCY TO CHANGE AND IMPROVE A DECISION AFFECTING THE ENVIRONMENT. NEVERTHELESS, THERE ARE MANY SITUATIONS IN WHICH THE EIS, IN DRAFT OR FINAL FORM, HAS HELPED BRING ABOUT PROJECT CHANGES. SEVERAL NOTABLE EXAMPLES CAN BE GIVEN.

AMONG THE EARLIEST EFFECTS OF THE EIS PROCESS ON FEDERAL DECISIONMAKING WAS THE INTERIOR DEPARTMENT'S SECOND DRAFT AND ITS FINAL EIS ON THE 800-MILE TRANS-ALASKA PIPELINE. VIRTUALLY ALL PARTIES INVOLVED AGREE THAT THE INTENSIVE ENVIRONMENTAL REVIEW OF THIS PROJECT PROMPTED IMPORTANT PROJECT DESIGN CHANGES AND OTHER IMPROVEMENTS IN ROUTING AND CONSTRUCTION TECHNIQUES.

SEVERAL YEARS AGO TWO MAJOR RADIOACTIVE WASTE DISPOSAL PROPOSALS OF THE FORMER ATOMIC ENERGY COMMISSION (AEC)--ONE AT LYONS, KANSAS, AND THE OTHER AT THE SAVANNAH RIVER IN SOUTH CAROLINA--WERE ABANDONED BECAUSE OF UNCERTAIN ENVIRONMENTAL IMPACTS IDENTIFIED BY AEC AND PUBLIC ANALYSES CONDUCTED THROUGH THE AGENCY'S EIS PROCESS.

IN EARLY 1975, ONE OF THE AEC'S TWO SUCCESSOR AGENCIES, THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION (ERDA), REVIEWED CRITICISMS OF THE AEC DRAFT PROGRAM STATEMENT ON COMMERCIALLY GENERATED RADIOACTIVE WASTE MANAGEMENT. THE DRAFT HAD PROPOSED THAT SURFACE STORAGE FACILITIES OFFERED THE BEST INTERIM SOLUTION BUT, AFTER THE COMMENTING PROCESS, ERDA CONCLUDED THAT NEPA AND THE PUBLIC

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INTEREST WOULD BE BEST SERVED BY ANOTHER ANALYSIS IN A NEW PROGRAM STATEMENT AND SO WITHDREW ITS STORAGE FACILITY BUDGET REQUEST.

THE OTHER AEC SUCCESSOR AGENCY, THE NUCLEAR REGULATORY COMMISSION (NRC), USED THE AEC IMPACT STATEMENT ON THE BREEDER REACTOR AND ITS OWN SUBSEQUENT EIS ON THE PLUTONIUM RECYCLE PROPOSAL AS DEFINITIVE BASES ON WHICH TO DEVELOP STRONGER MEASURES TO SAFEGUARD AGAINST THE MISUSE OF NUCLEAR MATERIALS. LIKE THE FORMER AEC, NRC'S REACTOR LICENSING DIRECTORATE HAS INTEGRATED THE EIS INTO ITS LICENSING DECISIONMAKING PROCESS AND, AS A RESULT OF THIS ENVIRONMENTAL WORK, HAS MODIFIED PROJECT DECISIONS IN NUMEROUS CASES.

THE U.S. ARMY CORPS OF ENGINEERS DECIDED TO DROP OR ABANDON WORK ON OVER A DOZEN OF ITS PROPOSED WATER RESOURCE PROJECTS BECAUSE ITS NEPA PROCESS--NOT LITIGATION--REVEALED THAT SIGNIFICANT ENVIRONMENTAL DAMAGE WOULD RESULT. ELEVEN OTHER PROJECTS HAVE BEEN STOPPED UNTIL ENVIRONMENTAL ANALYSIS IS COMPLETE. THE CORPS HAS ALSO MODIFIED OR RECOMMENDED FOR DE-AUTHORIZATION MANY MORE PROJECTS DUE IN LARGE PART TO NEPA AND THE EIS REQUIREMENT. THESE ACTIONS HAVE RESULTED IN WIDESPREAD ENVIRONMENTAL BENEFITS WHICH ARE REAL AND SUBSTANTIAL BUT CANNOT BE TALLIED IN MONETARY TERMS.

THE CORPS HAS ALSO USED THE EIS PROCESS EFFECTIVELY IN DECIDING WHETHER TO GRANT PERMITS FOR PRIVATE PROJECTS INVOLVING WATER AND RELATED LAND RESOURCES. IN 1976, AFTER COMPLETING AN EXTENSIVE EIS, THE CORPS REJECTED 2 OF 3 REQUIRED PERMITS FOR A PROPOSED RECREATIONAL AND RETIREMENT HOME DEVELOPMENT IN SOUTHEAST FLORIDA ON THE GROUNDS THAT IT WOULD HAVE DESTROYED 2000 ACRES OF VALUABLE WETLAND.

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ILLUSTRATING THE RANGE OF NEPA'S EFFECTS, THE EIS PROCESS HAS ALSO ALTERED BUILDING PROJECTS OF THE GENERAL SERVICES ADMINISTRATION. GSA'S DRAFT EIS ON THE KENNEDY MUSEUM AND LIBRARY IN CAMBRIDGE, MASSACHUSETTS, FOCUSED ATTENTION ON THE TRAFFIC AND OTHER ADVERSE CHANGES THAT WOULD AFFECT THE AREA. AS A RESULT, THE KENNEDY LIBRARY CORPORATION

DECIDED AGAINST THAT PROPOSED MUSEUM SITE AND EXAMINED SEVERAL OTHER ALTERNATIVES WHILE PLANNING TO KEEP THE KENNEDY ARCHIVES ON HARVARD UNIVERSITY PROPERTY.

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OVER THE PAST SEVERAL YEARS NEPA HAS HAD AN INCREASINGLY SIGNIFICANT EFFECT ON THE EXTENSIVE LAND USE PLANNING EFFORTS OF BOTH THE NATIONAL PARK SERVICE AND THE FOREST SERVICE, EACH OF WHICH MANAGE LARGE PORTIONS OF THE U.S. PUBLIC LANDS. ENVIRONMENTAL ASSESSMENTS AND STATEMENTS HAVE BEEN USED ROUTINELY BY BOTH AGENCIES, PERMITTING DECISIONMAKERS TO EVALUATE THE IMPACTS OF VARIOUS PLANS AND ALTERNATIVES FOR THE USE OF NATIONAL PARKS AND FORESTS. THE PARK SERVICE DIRECTOR RECENTLY REITERATED AND EMPHASIZED THE DECISIONMAKING IMPORTANCE OF THE NEPA PROCESS IN A DIRECTIVE TO ALL PARK SUPERINTENDENTS. LAST YEAR THE FOREST SERVICE ILLUSTRATED WHAT IS PERHAPS THE MOST FAR-REACHING USE OF THE EIS PROCESS WHEN IT ISSUED A DRAFT AND FINAL EIS ON ITS LONG-RANGE (10 TO 40 YEAR) PROGRAM FOR NATIONAL RANGE AND FOREST LANDS. THE FOREST SERVICE BEGAN ITS EIS PROCESS BY SEEKING AND RESPONDING TO EXTENSIVE PUBLIC AND GOVERNMENTAL INPUTS IN DEFINING PROGRAM ALTERNATIVES.

B. NEPA HAS IMPROVED INTERAGENCY AND INTERGOVERNMENTAL COOPERATION AND COORDINATION.

INTERAGENCY COOPERATION AND PLANNING HAVE BEEN ENCOURAGED BY NEPA AND HAVE DEVELOPED CONSIDERABLY OVER THE PAST
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SEVEN YEARS. NEPA REQUIRES THAT AGENCIES CONDUCT INTERDISCIPLINARY ANALYSES IN THEIR PLANNING AND DECISIONMAKING. THIS FREQUENTLY RESULTS IN INTERAGENCY COOPERATION IN THE PREPARATION OF EIS'S. AN EXCELLENT AND CURRENT EXAMPLE IS THE COMPREHENSIVE EIS ON BANNING NONESSENTIAL USES OF FLUOROCARBONS BEING PREPARED BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA), THE FOOD AND DRUG ADMINISTRATION (FDA), AND THE CONSUMER PRODUCT SAFETY COMMISSION (CPSC).

CEQ'S GUIDELINES ESTABLISH A MECHANISM FOR HAVING A LEAD AGENCY TAKE DIRECT RESPONSIBILITY FOR AN EIS WHEN SEVERAL DIFFERENT AGENCIES ARE INVOLVED IN A SINGLE ACTION. CEQ HAS FORMALLY RECOMMENDED LEAD AGENCIES IN A NUMBER OF SITUATIONS TO HELP REDUCE PAPER WORK AND DECISION DELAYS. COOPERATION BETWEEN LEAD AND SUBORDINATE AGENCIES HAS BEEN A REGULAR FEATURE OF THE EIS PROCESS AND HAS BEEN FOSTERED BY A NUMBER OF FORMAL INTERAGENCY AGREEMENTS ON EIS PREPARATION, MOST NOTABLY THOSE INVOLVING INTERACTION

BETWEEN THE NUCLEAR REGULATORY COMMISSION AND OTHER AGENCIES.

THE ACT ALSO REQUIRES THAT FEDERAL AGENCIES WITH JURISDICTION AND EXPERTISE, AND RELEVANT STATE GOVERNMENTS, RECEIVE AND HAVE AN OPPORTUNITY TO COMMENT ON EIS'S PREPARED BY OTHER AGENCIES. DRAFT EIS'S, WHICH ARE CIRCULATED TO FEDERAL, STATE AND LOCAL GOVERNMENT AGENCIES AND THE PUBLIC, HAVE ELICITED SUCH COMMENTS FORMALLY, AND FINAL EIS'S HAVE REQUIRED THE INITIATING AGENCY TO RESPOND TO DIFFERENCES, OFTEN BY RESOLVING THEM. PRIOR TO NEPA NO OTHER MECHANISM OF GOVERNMENT SO BROADLY AND PUBLICLY SUBJECTED IMPORTANT PROPOSED AGENCY ACTIONS TO INTERAGENCY AND PUBLIC SCRUTINY.

WHILE A GREAT DEAL OF WORK MUST BE DONE TO MAKE THIS REVIEW AND COMMENT PROCESS MORE EFFECTIVE IN DECISION-
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MAKING, IT IS IMPORTANT TO REALIZE HOW FEDERAL AGENCIES HAVE COME TO USE IT TO TEST AND IMPROVE THEIR PROPOSALS. AND IT HAS BEEN HEARTENING TO REVIEW THE RESPONSES OF THE 27 STATES RESPONDING TO CEQ'S QUESTIONNAIRE ON THIS SUBJECT. WITH FEW EXCEPTIONS, THE STATES HAVE REPORTED THAT THE FEDERAL EIS PROCESS HELPED THEIR PLANNING OR DECISIONMAKING PROCESS OR WAS, ON BALANCE, WELL WORTH THE COSTS THEY INCURRED IN REVIEWING FEDERAL EIS'S.

C. NEPA HAS PROVIDED A CONSTRUCTIVE AVENUE FOR PUBLIC PARTICIPATION IN GOVERNMENT DECISIONS.

THE PUBLIC HAS BEEN ABLE TO PARTICIPATE IN GOVERNMENTAL DECISIONS EFFECTIVELY THROUGH THE NEPA PROCESS, AS SPECIFICALLY INTENDED BY CONGRESS WHEN IT PASSED THE ACT. PUBLIC COMMENTS ON PROPOSED FEDERAL ACTIONS, ALONG WITH THE COMMENTS OF OTHER FEDERAL, STATE AND LOCAL AGENCIES, NOW RECEIVE FORMAL CONSIDERATION BY MEANS OF THE DRAFT AND FINAL EIS PROCESS. IN ADDITION, MANY AGENCIES HAVE HELD PUBLIC HEARINGS OR INFORMAL MEETINGS ON PROPOSED ACTIONS BEFORE OR AFTER WRITING AN EIS. THESE HEARINGS AND MEETINGS HAVE GIVEN FEDERAL AGENCIES VALUABLE INFORMATION ON IMPORTANT ISSUES, HAVE HELPED THEM ANTICIPATE AND AVOID CONTROVERSIAL ACTIONS AND HAVE PROVIDED THE PUBLIC WITH A CONSTRUCTIVE OUTLET FOR FRUSTRATIONS AGAINST OUR IMMENSE, OFTEN IMPERSONAL, AND SOMETIMES UNRESPONSIVE, GOVERNMENT. IT IS TESTIMONY TO THE IMPORTANCE OF THESE OPPORTUNITIES FOR PUBLIC PARTICIPATION IN ENVIRONMENTAL MANAGEMENT THAT A RECENT POLL OF OVER 100 ENVIRONMENTAL LEADERS, REPORTED BY THE AMERICAN FORESTRY ASSOCIATION, NAMED NEPA AS THE MOST IMPORTANT ENVIRONMENTAL STATUTE OF

THE CENTURY. - - -

IV. APPARENT PROBLEMS WITH THE EIS PROCESS.

THE MOST COMMON OBJECTIONS TO THE EIS ARE THESE: IT DELAYS
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PROJECTS, IT INCREASES PROJECT COSTS, AND IT STIMULATES
LITIGATION. CLOSE ANALYSIS GIVES THESE "PROBLEMS" A
DIFFERENT LOOK.

IN THE FIRST YEAR OR TWO AFTER NEPA WAS PASSED, DELAYS DID
OCCUR. VIRTUALLY ANY NEW POLICY ENTAILS SOME DELAY, AS
FEDERAL MANAGERS ADAPT TRADITIONAL PROCEDURES TO CHANGED
RULES. BUT THIS PREDICTABLE PAUSE FOR A SHIFTING OF GEARS
WAS PROLONGED IN THE CASE OF NEPA BECAUSE CONGRESS DID NOT
INSERT A "GRANDFATHER CLAUSE" IN THE ACT.

THIS MEANT THAT AGENCIES WITH PROJECTS WELL INTO THE
PLANNING OR EVEN CONSTRUCTION PHASE HAD TO HALT WORK ON
ANY PROJECT THAT WOULD HAVE SIGNIFICANT ENVIRONMENTAL
EFFECTS, AND PREPARE AN EIS ON EACH OF THEM--IN A VERY
SHORT TIME. IN 1971 ALONE, FOR EXAMPLE, THE DEPARTMENT OF
TRANSPORTATION FILED 1,293 DRAFT ENVIRONMENTAL IMPACT
STATEMENTS--THE GREAT MAJORITY ON PROJECTS AUTHORIZED OR
UNDERTAKEN BEFORE NEPA WAS PASSED. IN 1975, BY CONTRAST,
THE DEPARTMENT OF TRANSPORTATION (DOT) FILED ONLY 229
DRAFT EIS'S--ABOUT ONE-FIFTH THE NUMBER OF THE PEAK YEAR.
IN 1971, FEDERAL AGENCIES FILED A TOTAL OF ALMOST 2,000
DRAFT EIS'S--TWICE THE NUMBER THEY FILED LAST YEAR. THIS
SUDDEN WORKLOAD, IMPOSED ON AGENCIES THAT HAD LITTLE
OPPORTUNITY TO STAFF FOR NEPA, CREATED A BACKLOG THAT
UNDENIABLY DID LEAD TO DELAYS IN PROJECT APPROVALS.

BUT THE LACK OF A "GRANDFATHER CLAUSE" EXEMPTING WELL-
ADVANCED PROJECTS FROM NEPA REQUIREMENTS ALSO CREATED A
MORE SUBTLE PROBLEM--ONE THAT HAMPERS THE EFFECTIVE
OPERATION OF THE EIS PROCESS TO THIS DAY. FIRST OF ALL,
IT LED TO BAD HABITS: FEDERAL MANAGERS WHO HAD ALREADY
INVESTED CONSIDERABLE TIME AND MONEY IN A PROJECT WROTE
THEIR EIS'S TO JUSTIFY DECISIONS THAT HAD ALREADY BEEN
MADE. SECOND, IT INHIBITED ANY GENUINE QUESTIONING FROM
AN ENVIRONMENTAL PERSPECTIVE OF THE ECONOMIC AND TECHNICAL
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ASSUMPTIONS ON WHICH A PROJECT HAD BEEN BASED. THUS, THE

DELAY OCCASIONED BY EIS PREPARATION SEEMED DOUBLY USELESS--AND THE EIS ITSELF ACQUIRED A REPUTATION, IN THOSE EARLY DAYS, FOR BEING AN IRRELEVANT EXERCISE IN MEANINGLESS, EXPENSIVE PAPERWORK. IT HAS NOT YET ENTIRELY OUTLIVED THAT REPUTATION.

THESE DAYS, THE INITIAL BACKLOG OF EIS'S IS VIRTUALLY GONE. THOSE SUBMITTED NOW ARE OVERWHELMINGLY FOR ACTIONS PROPOSED AFTER NEPA WAS PASSED.

NEVERTHELESS, THE CRITICISM OF NEPA-OCCASIONED DELAYS PERSISTS. BECAUSE CEQ IS CHARGED WITH SUPERVISING THE EIS PROCESS AND THUS HAS AN INTEREST IN MAKING IT WORK PROPERLY, IT LOOKED INTO THIS. IT ASKED FEDERAL AGENCIES TO ESTIMATE THE TIME REQUIRED TO PREPARE A DRAFT EIS. GIVEN THE VARIETY OF PROJECTS UNDERTAKEN BY THE FEDERAL AGENCIES, THE TIMES VARIED GREATLY--FROM A MINIMUM OF ONE MONTH FOR SEVERAL AGENCIES, TO A MAXIMUM OF SEVERAL YEARS FOR OTHERS.

THE CRUCIAL POINT TO BE MADE ABOUT THIS PERIOD IS THAT IN A PROPERLY RUN AGENCY THAT TAKES NEPA SERIOUSLY, THE PREPARATION OF AN EIS DOES NOT ADD MONTHS TO THOSE NECESSARY FOR THE NORMAL PLANNING PROCESS; RATHER, ENVIRONMENTAL ANALYSIS PROCEEDS IN TANDEM WITH TECHNICAL AND ECONOMIC ANALYSIS. IT NEED NOT BE AN ADDITION TO NORMAL PLANNING BUT INITIALLY MAY REQUIRE ADDITIONAL RESOURCES.

THIS POINT WAS BROUGHT OUT IN TESTIMONY BEFORE CONGRESS IN SEPTEMBER 1975 BY BRIGADIER GENERAL KENNETH MCINTYRE, ACTING DIRECTOR OF THE U.S. ARMY CORPS OF ENGINEERS. FROM CEQ'S SURVEY, IT WAS LEARNED THAT THE CORPS SPENDS AN AVERAGE OF NINE MONTHS ON PREPARING A DRAFT EIS, AND ANOTHER TEN-AND-A-HALF MONTHS ON REVIEW AND REVISION PRIOR

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TO FILING A FINAL EIS--A ROUGH TOTAL OF 20 MONTHS. ADDING TIME FOR REVIEW OF THE FINAL EIS, IT CAN BE ASSUMED THAT THE WHOLE PROCESS TAKES 24 MONTHS. THIS IS A SUBSTANTIAL PERIOD, AND IF IT ALL REPRESENTED DELAY, IT WOULD BE AN EXTREMELY COSTLY ONE.

BUT GENERAL MCINTYRE TESTIFIED THAT THE AVERAGE LENGTH OF TIME REQUIRED FOR A CORPS PROJECT IS 15 TO 16 YEARS. OF THESE, HE INDICATED, ONLY ABOUT FIVE YEARS WOULD GO INTO ACTUAL CONSTRUCTION; THE REST WOULD GO INTO AN INITIAL STUDY OF THE FEASIBILITY OF A PROJECT, FOLLOWED BY A REQUEST FOR PROJECT AUTHORIZATION AND FUNDING BY CONGRESS, AND PLANNING AND DESIGN WORK PRIOR TO CONSTRUC-

TION.

FINALLY, GENERAL MCINTYRE TESTIFIED, SINCE THE PASSAGE OF NEPA, THE CORPS PLACES EIS ANALYSIS AMONG THE MATTERS TO BE CONSIDERED FIRST--AS PART OF THE FEASIBILITY STUDY-- RATHER THAN LEAVING IT UNTIL AFTER THE PROJECT MEETS OTHER CRITERIA. THE CORPS FOUND THAT THE KEY LESSON WAS THE NECESSITY FOR HANDLING THE ENVIRONMENTAL FACTORS AS AN INTEGRAL PART OF THE OVERALL PLANNING PROCESS. THE EIS MUST NOT BE MADE THE END IN AND OF ITSELF. ENVIRONMENTAL DATA MUST BE PROVIDED IN A TIMELY MANNER TO THE DECISION-MAKER SO AS TO BE CONSIDERED TO THE SAME DEPTH OF UNDERSTANDING AND DETAIL AS THE ECONOMIC AND ENGINEERING CONCEPTS AND INFORMATION.

TO REPEAT, ENVIRONMENTAL ANALYSIS NEED NOT DELAY A PROJECT IF IT IS UNDERTAKEN AS AN INTEGRAL COMPONENT OF THE PLANNING NECESSARY FOR ANY FEDERAL ACTION.

THERE ARE, HOWEVER, OTHER CAUSES OF DELAY RELATED TO NEPA AND THE EIS PROCESS. ONE OF THEM HAS BEEN THE TENDENCY OF SOME FEDERAL AGENCY HEADS NOT TO TAKE NEPA SERIOUSLY--AND THIS ATTITUDE IS PASSED ON DOWN THE LINE, EITHER
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EXPLICITLY OR BY EXECUTIVE OSMOSIS, TO PROJECT MANAGERS. NOT ALL MANAGERS ACCEPT THIS POINT OF VIEW; INDEED, IN MANY CASES, MIDDLE LEVEL MANAGERS HAVE TRIED VERY HARD TO LIVE UP TO NEPA IN THE FACE OF INDIFFERENCE OR EVEN HOSTILITY FROM THE TOP.

BUT IF MANAGERS ADOPT AN INDIFFERENT OR HOSTILE ATTITUDE TOWARD NEPA, THEY OFTEN WIND UP CREATING DELAYS. THEY CONCLUDE, FOLLOWING A SHOW OF ENVIRONMENTAL ANALYSIS, THAT A PROPOSED ACTION WILL HAVE NO SIGNIFICANT IMPACT-- AND HENCE, THAT NO EIS IS NECESSARY. SOMETIMES AGENCIES DECLINE TO PREPARE AN EIS SIMPLY BECAUSE THE ACTION DOES NOT SEEM TO BE CONTROVERSIAL. FREQUENTLY, SUCH DECISIONS LEAD TO LITIGATION AND, IN THE END, A COURT ORDER TO PREPARE AN EIS. IN THAT CASE, THE PROJECT IS HALTED--NOT BY NEPA PER SE, BUT BY ATTEMPTS TO BY-PASS IT.

ANOTHER REASON FOR DELAY IS CHANGING PUBLIC PREFERENCE FOR CERTAIN KINDS OF PROJECTS. TWENTY YEARS AGO, DAMS, HIGHWAYS, AND AIRPORTS WERE POPULAR ITEMS. THESE DAYS, MANY SUCH PROJECTS ARE GREETED SKEPTICALLY--NOT BECAUSE OF NEPA, BUT BECAUSE OF OUR EXPERIENCE WITH THE UNANTICIPATED SIDE EFFECTS OF SEEMINGLY WORTHY ACTIVITIES.

FINALLY, SOME PROJECTS OUGHT TO BE DELAYED. COMPLEX

PROJECTS WITH POTENTIALLY FAR-REACHING EFFECTS ON THE ENVIRONMENT DESERVE A THOROUGH LOOK, AND ARE OFTEN IMPROVED AS A RESULT OF COMMENT--AND EVEN OPPOSITION--BY THE PUBLIC AND BY OTHER GOVERNMENTAL AGENCIES.

AS PART OF CEQ'S SURVEY ON NEPA, IT ALSO CHECKED INTO THE AMOUNT OF LITIGATION THAT HAS ARISEN IN CONNECTION WITH THE EIS PROCESS. THERE IS NO DOUBT THAT NEPA STIMULATES SOME LITIGATION; IF IT DID NOT, IT WOULD BE A POINTLESS, TOOTHLESS PIECE OF LEGISLATION. BUT THE CLAIM THAT NEPA-RELATED SUITS INTERFERE WITH THE TIMELY EXECUTION OF

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A SUBSTANTIAL NUMBER OF FEDERAL ACTIONS SIMPLY DOES NOT STAND UP.

IN THE FIVE AND A HALF YEARS BETWEEN JANUARY 1, 1970 AND JUNE 30, 1975, A TOTAL OF 654 ACTIONS WERE BROUGHT, ALLEGING A NEPA ISSUE. DURING THAT SAME PERIOD, FEDERAL AGENCIES INITIATED TENS OF THOUSANDS OF PROJECTS; IN 1975 ALONE, AGENCIES ASSESSED MORE THAN 30,000 PROJECTS FOR ENVIRONMENTAL IMPACTS. SINCE 1970, ABOUT 6,000 DRAFT EIS'S HAVE BEEN SUBMITTED. ONLY 291--LESS THAN FIVE PERCENT--WERE CHALLENGED IN COURT AS BEING INADEQUATE.

OF THE 333 CASES COMPLETED BY JUNE 30, 1975, ABOUT ONE-THIRD WERE DISMISSED AT THE TRIAL COURT LEVEL. ROUGHLY 60 PERCENT RESULTED IN TEMPORARY INJUNCTIONS, WHICH RANGED FROM A FEW WEEKS TO THE TIME REQUIRED TO PREPARE AN ADEQUATE IMPACT STATEMENT. ONLY FOUR CASES RESULTED IN "PERMANENT" INJUNCTIONS--AND NOT EVEN IN THESE WAS THE AGENCY PRECLUDED FROM PROCEEDING WITH ITS PROJECT OR PROGRAM AFTER IT COMPLIED WITH NEPA.

V. IMPROVEMENTS NEEDED.

THE MAJOR IMPROVEMENT NEEDED IN THE ENVIRONMENTAL IMPACT STATEMENT PROCESS IS TO MAKE IT MORE USEFUL TO AGENCY PLANNERS AND DECISIONMAKERS. THERE ARE A NUMBER OF STEPS THAT NEED TO BE TAKEN TO ACHIEVE THIS RESULT.

A. THE STATEMENTS THEMSELVES NEED TO BE FAR MORE CONCISE AND SHOULD FOCUS ON THE SIGNIFICANT ENVIRONMENTAL IMPACTS OF A PROPOSED ACTION AND ITS ALTERNATIVES. AS A GENERAL MATTER, FEW EIS'S NEED TO BE MORE THAN A SINGLE VOLUME LONG. AGENCIES SHOULD DISTILL THE INFORMATION PRODUCED BY ENVIRONMENTAL ANALYSIS AND THE STATEMENTS SHOULD FOCUS ON THOSE RELATIVELY FEW QUESTIONS CRUCIAL TO DECIDING THE ACCEPTABILITY OF A PROJECT. DETAILED INFORMATION AND

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EXHAUSTIVE ANALYSIS ARE ESSENTIAL TO THE PREPARATION OF AN EIS, BUT THIS SUPPORTING MATERIAL SHOULD BE PLACED IN APPENDICES OR IN OTHER WAYS MADE AVAILABLE TO THE PUBLIC. CEQ HAS TAKEN A NUMBER OF STEPS, INCLUDING SUPPLEMENTARY GUIDANCE TO AGENCIES, TO INSURE THAT EIS'S ARE NOT THE CUMBERSOME DOCUMENTS THAT MANY HAVE BEEN IN THE PAST.

B. FEDERAL AGENCIES WILL NEED TO IMPROVE THE APPLICATION OF THE EIS REQUIREMENT TO THEIR BROADER PROGRAM AND POLICY ACTIONS. A CENTRAL PURPOSE OF NEPA WAS TO REFORM PIECEMEAL DECISIONMAKING BY REQUIRING MORE COMPREHENSIVE AND SYSTEMATIC APPROACHES TO ENVIRONMENTAL ANALYSIS.

PROGRAM IMPACT STATEMENTS CONTINUE TO BE USED AS A MEANS OF ANALYZING IMPACTS OF MAJOR PROGRAMS AND THEIR ALTERNATIVES. AS OF MARCH 1976, 24 OF THE 33 DEPARTMENTS AND MAJOR AGENCIES HAD USED PROGRAM STATEMENTS. IN 1975 CEQ RECEIVED FINAL IMPACT STATEMENTS ON 38 BROAD FEDERAL PROGRAMS COVERING A RANGE OF TOPICS. EXAMPLES ARE THE EMERGENCY WATERSHED PROTECTION PROGRAM OF THE SOIL CONSERVATION SERVICE, THE NATIONAL WILDLIFE REFUGE PROGRAM OF THE FISH AND WILDLIFE SERVICE OF THE INTERIOR DEPARTMENT, AND THE COAL CONVERSION PROGRAM OF THE FEDERAL ENERGY ADMINISTRATION

OCCASIONALLY, HOWEVER, FEDERAL DECISIONMAKERS TAKE ACTIONS WITHOUT CONSIDERING THEIR EFFECTS ON RELATIONSHIPS TO OTHER ACTIONS. SPECIAL PROBLEMS ARISE WHEN DIFFERENT FEDERAL AGENCIES PROPOSE DIFFERENT ACTIONS AFFECTING A SIMILAR REGION, AS, FOR EXAMPLE, WHEN DIFFERENT FEDERAL AGENCIES LICENSE ENERGY PROJECTS THAT CAN HAVE SIGNIFICANT CUMULATIVE IMPACTS ON A COMMON RESOURCE OR RIVER BASIN. CEQ AND THE COURTS HAVE BOTH ATTEMPTED TO DEVELOP BETTER

GUIDANCE FOR AGENCIES ON WHAT IS AN APPROPRIATE RANGE OF PROPOSED ACTIONS TO BE COVERED BY A GIVEN IMPACT STATEMENT

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MENT. THE MOST SOPHISTICATED PRACTICES TO DATE ARE FOUND AMONG AGENCIES WHICH PREPARE BROAD SCALE IMPACT STATEMENTS COVERING A PROPOSED PROGRAM FOLLOWED BY MORE SPECIFIC STATEMENTS ON INDIVIDUAL ACTIONS WITH SIGNIFICANT IMPACTS THAT ARE NOT ADDRESSED BY THE BROADER STATEMENT. THE "TIERED" APPROACH OF THE FOREST SERVICE BEGINS WITH A STATEMENT ON NATIONAL MANAGEMENT GOALS, FOLLOWED BY

STATEMENTS ON AREAWIDE LAND USE PLANS OR, IF NECESSARY,
BY SITE SPECIFIC STATEMENTS.

C. THE IMPACT STATEMENT PROCESS CAN MORE EFFECTIVELY
SATISFY THE NUMEROUS ENVIRONMENTAL REVIEW REQUIREMENTS OF
LAWS OTHER THAN NEPA. A VAST NUMBER OF ENVIRONMENTAL
LAWS, FOR RECREATION, WATER RESOURCES, AIR AND WATER
POLLUTION, HISTORIC AND CULTURAL PRESERVATION AND
ENDANGERED SPECIES PRESERVATION REQUIRE CERTAIN CONSULTA-
TION AND CERTIFICATION REQUIREMENTS BY SPECIFIC FEDERAL
AGENCIES BEFORE FEDERAL ACTIONS CAN BE TAKEN. THE
ENVIRONMENTAL IMPACT STATEMENT PROCESS CAN BE AN EFFECTIVE
WAY OF ASSURING THAT THESE CONSULTATIONS TAKE PLACE AS A
PART OF NORMAL PROJECT REVIEW. ADMINISTRATIVE GUIDANCE
TO FEDERAL AGENCIES IS NECESSARY, HOWEVER, TO AVOID
DUPLICATION AND TO MAKE THE EIS PROCESS AN EFFICIENT
OVERALL REVIEW PROCEDURE.

BY THE SAME TOKEN, THE FEDERAL EIS PROCESS CAN AND SHOULD
BE BETTER INTEGRATED WITH EXISTING STATE REQUIREMENTS FOR
IMPACT STATEMENTS FOR OTHER ENVIRONMENTAL REVIEWS.
SOLUTIONS TO THIS COORDINATION PROBLEM LARGELY DEPEND ON
INDIVIDUAL FEDERAL AGENCIES' EFFORTS WITH THE VARIOUS
STATES, EACH OF WHICH HAS DIFFERENT ENVIRONMENTAL
PROCEDURES.

D. FEDERAL AGENCIES WILL NEED TO GIVE GREATER ATTENTION
TO THE ENVIRONMENTAL REVIEW PROCESSES THAT SHOULD OCCUR
BEFORE AN EIS IS PREPARED AND AFTER IT HAS BEEN PREPARED.
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SEVERAL AGENCIES, NOTABLY THE U.S. ARMY CORPS OF
ENGINEERS, THE FOREST SERVICE, AND EPA HAVE LED THE WAY
IN HELPING INTEGRATE ENVIRONMENTAL IMPACT ANALYSIS WITH
AGENCY PLANNING. THEY HAVE GIVEN PARTICULAR CARE TO
PLANNING IN THE EARLY ENVIRONMENTAL SURVEY PROCESS,
INCLUDING THE USE OF A WRITTEN ASSESSMENT OR EXPERT
CONSULTATION IN ORDER TO MINIMIZE ADVERSE EFFECTS AND
IMPROVE PROJECT DESIGN BEFORE ANY ACTIONS ARE PROPOSED.
SUCH PROCESSES SHOULD BE ENCOURAGED AND DEVELOPED WITHIN
A LARGE NUMBER OF OTHER AGENCIES.

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E. THE FILING OF THE FINAL IMPACT STATEMENT SHOULD NOT,
HOWEVER, BE THE END OF THE ENVIRONMENTAL REVIEW PROCESS,
AS IS COMMONLY THE CASE. AGENCIES DO NOT NOW HAVE TO
EXPLAIN THEIR DECISIONS IF THEY DEVIATE FROM THE RESULTS
OF THEIR EIS ANALYSIS. IN FACT, THEY DO NOT EVEN HAVE TO
INFORM INTERESTED PARTIES OF THEIR DECISIONS TO DO SO.
THEY USUALLY DO NOT PROVIDE THE CONTINUING REVIEW AND

MONITORING OF THE EFFECTS OF THEIR ACTIONS NOR THE STANDARDS OR CRITERIA WHICH WILL TRIGGER AGENCY RESPONSE IN THE EVENT OF ADVERSE EFFECTS. IN SHORT, AGENCIES GENERALLY DO NOT USE THEIR EIS'S AS A STANDARD TO WHICH THEIR SUBSEQUENT CONDUCT CAN BE HELD ACCOUNTABLE. THE NEED FOR A NEW MECHANISM TO REVIEW AND MONITOR THE EFFECTS OF ACTIONS AFTER THE COMPLETION OF THE EIS PROCESS REMAINS A TROUBLESOME DIFFICULTY THAT NEEDS NEW ATTENTION IN THE FUTURE.

VI. A FEW CONCLUSIONS AND QUESTIONS.

FIRST, THE OBVIOUS. THE UNITED STATES' ENVIRONMENTAL IMPACT STATEMENT PROCESS WORKS. OF THE MANY ENVIRONMENTAL PROTECTION EFFORTS UNDERTAKEN IN THE UNITED STATES IN THE LAST DECADE, THE EIS PROCEDURE IS MOST OFTEN SINGLED-OUT AS BEING THE MOST IMPORTANT. HOWEVER, THE EIS SYSTEM IS UNCLASSIFIED

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NOT WITHOUT ITS FAULTS, BOTH REAL AND APPARENT. MOST WOULD AGREE THAT ITS PRESENT REAL PROBLEMS WILL BE SOLVED BY EVOLUTIONARY CHANGES WITHIN THE SCOPE OF PRESENT LEGISLATION.

SECOND, THE MOST SIGNIFICANT ASPECT OF THE EIS PROCESS SURPRISINGLY HAS BEEN POLITICAL, NOT ENVIRONMENTAL. THE PUBLISHING OF THE DETAILED FACTUAL BASE ON WHICH DECISIONS SHOULD BE MADE, AND INVITING OTHER FEDERAL AGENCIES, STATE AND LOCAL GOVERNMENTS AND PUBLIC CITIZENS TO PARTICIPATE IN THE PROCESS HAVE BEEN REVOLUTIONARY. THIS PROCESS HAS NOT ONLY GIVEN OTHER AGENCIES AND THE PUBLIC GREATER INFORMATION AND OUTLINED ALTERNATIVES; BUT IT HAS HELPED TO POINT OUT THE KEY POLITICAL FACTS OF "WHO PAYS" AND "WHO BENEFITS." OPENING THESE CENTRAL POLITICAL QUESTIONS TO PUBLIC SCRUTINY HAS PRODUCED IN THE CONTEXT OF AN ENVIRONMENTAL PROCEDURE A SMALL REVOLUTION IN DEMOCRATIZING DECISIONMAKING WITHIN THE UNITED STATES.

THIRD IS THE TRUISM THAT THE ENVIRONMENTAL IMPACT STATEMENT PROCESS, DESPITE ITS SUCCESSES, DOES NOT REPLACE BASIC ENVIRONMENTAL PROTECTION LAWS AND REGULATIONS. MUCH OF THE CRITICISM DIRECTED AT THE EIS PROCESS ARISES WHEN PROPONENTS OF STRONG ENVIRONMENTAL PROTECTIVE MEASURES SEEK TO USE THE NEPA PROCEDURES AS A SUBSTITUTE FOR NONEXISTENT FEDERAL, STATE, AND LOCAL LEGISLATION. WHEN, FOR EXAMPLE, REGULATIONS REGARDING THE STRIPMINING OF COAL ARE ANTIQUATED OR NONEXISTENT, THE EIS HAS BECOME A SUBSTITUTE POLITICAL ARENA, A ROLE THE NEPA WAS NOT SPECIFICALLY DESIGNED TO FULFILL.

LASTLY, IT SHOULD BE EMPHASIZED THAT SINCE THE EIS
REQUIREMENT TRACKS THE DECISIONMAKING PROCESS, IT IS ONLY
AS GOOD AS THE DECISIONMAKING PROCESS ITSELF. WHEN
DECISIONS TAKE PLACE ON A CASE-BY-CASE BASIS, THE EIS
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RESULTS ARE CONSEQUENTLY LIMITED. THE EIS PROCESS ITSELF
HAS POINTED OUT THE INHERENT PROBLEMS IN APPLYING
CASE-BY-CASE ANALYSIS IN AREAS OF BROADER CONCERN.
THE EIS RESULTS SUGGEST A NEED FOR A MORE COMPREHENSIVE
PLANNING PROCESS IN MANY AREAS, COUPLED WITH STRONG PUBLIC
PARTICIPATION. HOW FAR AND HOW FAST THE FEDERAL AGENCIES

MOVE TOWARD MORE COMPREHENSIVE PLANNING REMAINS TO BE
SEEN. WHAT IS CLEAR IS THAT THE ENVIRONMENTAL IMPACT
STATEMENT PROCESS WILL BOTH PUSH TOWARD AND SERVE MORE
COMPREHENSIVE DECISIONMAKING PROCEDURES. INCREASINGLY
BROADER PLANNING IS BEING UNDERTAKEN AT THE FEDERAL LEVEL
IN PUBLIC LAND MANAGEMENT AND COASTAL ZONE MANAGEMENT.
HOWEVER, IN SEVERAL OTHER CRITICAL ENVIRONMENTAL AREAS,
THERE IS NEITHER A FEDERAL INVENTORY OF SCARCE ENVIRON-
MENTAL RESOURCES NOR DEVELOPMENT OF LONG-TERM UTILIZATION
PLANS. QUESTIONS REGARDING THE HIGH COST AND UNCERTAIN
BENEFITS OF COMPREHENSIVE PLANNING PLUS FUNDAMENTAL
POLITICAL QUESTIONS REGARDING PUBLIC PLANNING OF PRIVATE
RESOURCES STILL REMAIN TO BE ANSWERED. WE DO KNOW THAT
THE ENVIRONMENTAL IMPACT STATEMENT PROCESS WORKS IN
LARGE MEASURE BECAUSE THE CONGRESS LAID DOWN WITH FORESIGHT
A LEGISLATIVE DICTUM WHICH
HAS BEEN ENFORCED BY THE COURTS. IN ADDITION, THE
FEDERAL AGENCIES HAVE, ON THE WHOLE, SHOWN A REMARKABLE
WILLINGNESS AND ABILITY TO ADAPT TO THE NEW EIS REQUIRE-
MENTS. ON THE OTHER HAND, WHETHER THE LONG-TERM PUSH
OF THE ENVIRONMENTAL IMPACT STATEMENT PROCESS WILL LEAD
TO MORE COMPREHENSIVE AND EFFECTIVE ENVIRONMENTAL
PLANNING THROUGH AN EVOLUTIONARY PROCESS REMAINS AN OPEN
QUESTION.

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